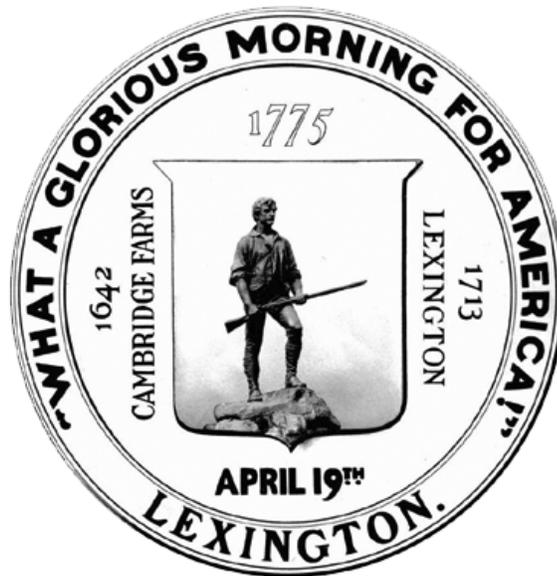


APPROPRIATION COMMITTEE TOWN OF LEXINGTON



REPORT TO THE SPECIAL TOWN MEETINGS 2020-2 AND 2020-3

RELEASED OCTOBER 7, 2020

APPROPRIATION COMMITTEE MEMBERS

Glenn P. Parker, Chair • Sanjay Padaki, Vice Chair • Alan Levine, Secretary
Carolyn Kosnoff (ex officio; non-voting) • John Bartenstein • Eric Michelson
Meg Muckenhoupt • Lily Manhua Yan

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Summary of Warrant Article Recommendations

Abbreviations

EF	Enterprise Fund	CPA	Community Preservation Act
GF	General Fund	DSSF	Debt Service Stabilization Fund
RE	Retained Earnings	IP	A motion to Indefinitely Postpone is expected
RF	Revolving Fund	TDM	Traffic Demand Management

Special Town Meeting 2020-2

Art icle	Title	Funds Requested	Funding Source	Committee Recommendation
2	Short Term Rental Impact Fee	<i>None</i>	<i>N/A</i>	Approve (7-0)
6	Authorize Special Legislation- Development Surcharge For Community Housing	<i>None</i>	<i>N/A</i>	Approve (7-0)

Special Town Meeting 2020-3

Art icle	Title	Funds Requested	Funding Source	Committee Recommendation
2	Appropriate for Prior Years' Unpaid Bills	<i>None</i>	<i>N/A</i>	IP
3	Establish, Dissolve and Appropriate To and From Specified Stabilization Funds	<i>See below</i>	<i>See below</i>	Approve (7-0)
4	Rescind Prior Borrowing Authorizations	<i>None</i>	<i>N/A</i>	Approve (7-0)
5	Amend FY2021 Operating, Enterprise and CPA Budgets	<i>See below</i>	<i>See below</i>	Approve (7-0)
6	Amend Post Employment Insurance Liability Fund	<i>None</i>	<i>N/A</i>	IP
7	Land Acquisition	<i>Unknown</i>	CPA Cash CPA Debt	Pending
8	Reduce Legal Expenses	<i>None</i>	<i>N/A</i>	Disapprove (1-6)

Preface

This preface describes the structure and stylistic conventions used in this report. It is followed by an introduction discussing changes in the Town's financial status since the previous Annual Town Meeting, along with issues pertinent to the Town's general financial situation. The main body of this report contains article-by-article discussions and recommendations on those articles that, in our opinion, have substantial financial relevance.

The discussion for each article presents the prevailing view of the Committee, as well as any other considerations or cautions that we feel Town Meeting should be informed of. If one or more Committee members are strongly opposed to the majority position, we summarize the opposing perspective. Each article discussion concludes with the most recent vote of the Committee prior to publication. The vote is summarized by the number of members in favor, followed by the number of members opposed, and lastly (when applicable) the number of members abstaining, e.g. "(6-2-1)" indicates six members in favor, two opposed, and one abstaining. It is not always possible for each Committee member to formally register their votes on every article. In such instances, the total number of votes and abstentions published will be less than the Committee's current membership. For convenience, Committee votes are also summarized on the preceding page(s).

This report does not replicate information readily available to Town Meeting members elsewhere. Key documents that inform our analysis and provide a more thorough picture of the Town finances are:

- The Town Manager's *Fiscal Year 2021 Recommended Budget & Financing Plan* (the "Brown Book"), dated February 21, 2020, fully describes the annual budget of the Town. The Brown Book also summarizes budget laws and bylaws (Appendix B) and includes a glossary of financial terms (Appendix D).
- *The Level Service and Recommended Budget of the Superintendent and School Committee* as voted February 4, 2020 (hereafter the "LPS Budget Book", which details the budget plan for the Lexington Public Schools.
- Capital Expenditures Committee (CEC) Report to the 2020 Annual Town Meeting, which provides recommendations on appropriation requests for capital projects.
- Community Preservation Committee (CPC) Report to the 2020 Annual Town Meeting, which details requests approved by the CPC and funded using revenue from the CPA surcharge.

The LPS Budget Book is available online at:

<https://sites.google.com/lexingtonma.org/lps-finance-and-operations/fy-21-budget>

All other reports for this Town Meeting will be available online at:

<https://www.lexingtonma.gov/town-meeting/pages/2020-annual-town-meeting>

Acknowledgements

The content of this report, except where otherwise noted, was researched, written and edited by Committee members who volunteer their time and expertise, and with the support of Town staff. We have the pleasure and the privilege of working with Town Manager James Malloy; Assistant Town Manager for Finance Carolyn Kosnoff (an *ex officio* member of our Committee); Budget Officer Jennifer Hewitt; the Capital Expenditures Committee; the Community Preservation Committee; the School Committee; the Permanent Building Committee; the Planning Board; Superintendent of Schools Dr. Julie Hackett; Assistant Superintendent for Finance and Operations David Coelho; and the Lexington Select Board. We thank the municipal and school staff, Town officials, boards and volunteers who have contributed time and expertise to help us prepare this report. Last but not least, we thank Sara Arnold, who records and prepares the minutes for our meetings.

Introduction

The Appropriation Committee is required to create a report with a review of the budget as adopted by the Select Board, and any subsequent revisions, including an assessment of the budget plan and a projection for future years' revenues and expenses. This report includes the Committee's analysis and recommendations regarding all appropriations of Town funds that are anticipated, and other municipal matters that may come before Town Meeting. This report is published and distributed to the members of Town Meeting as a PDF file via the Town website. Official printed copies are produced for the Town Clerk's office and Cary Memorial Library for archival purposes. The Committee also makes presentations during Town Meeting, including recommendations on appropriations and other matters for which the Committee's formal position was pending at the time of publication.

Committee Membership

Albert "Nick" Nichols resigned from the Committee in the summer of 2020 and relocated to another state to be with family. While his time on the Committee was limited, we appreciated his enthusiasm and benefited from his expertise.

The Committee currently has seven members with two unfilled seats.

Schedule for Report Publication

This fall the Select Board has called for two Special Town Meetings, STM 2020-2 and STM 2020-3. The warrant for STM 2020-3 is limited to financial articles that could impact the Select Board's action when setting the FY2021 property tax rate in November. We anticipate that the articles in STM 2020-3 will be given priority in the scheduling of debate with the intent of dissolving STM 2020-3 before proceeding with STM 2020-2.

The Committee's goal is to publish a report at least one week prior to the start of debate on financial articles. This report is being published on October 7, one week before the start of the 2020 Fall Special Town Meetings, based on the assumption that financial articles will be debated during the first session.

Reserve Fund

On June 29, 2020, two transfers from the Reserve Fund were requested by the Town Manager and the Select Board. A transfer of \$100,000 to the *Fire-Suppression Overtime* account was approved, and a transfer of \$95,850 to the *Off Duty Detail—Police* account was also approved. Both of these transfers were due to unanticipated expenses related to the Covid-19 pandemic.

In FY2020, the appropriation to the Reserve Fund was \$900,000 and the closing balance was \$704,150. As always, the unused funds flow to Free Cash in the following fiscal year.

In FY2021, the appropriation to the Reserve Fund was reduced to \$750,000 in recognition of a downward trend in the use of the Reserve Fund in recent years. This policy was adopted prior to the Covid-19 pandemic.

Developments Since Adoption of the FY2021 Budget

Navigating through the Covid-19 pandemic has been a challenge for the Town. The impact has rippled through every department including, obviously, the public school system. While many aspects of life in our town have remained relatively stable, there have been changes in the pattern of use for town services and facilities, along with new and unexpected requirements imposed on the Town's Public Health, Police and Fire Departments. The Town has seen increases and reductions in both revenue and expenses at every level. Basic questions about the short and long-term financial impact of the crisis have been compounded by great uncertainty around the timing and duration of these changes.

In the run-up to the June 2020 Annual Town Meeting (ATM), there was real concern about the possibility of a major revenue shortfall in FY2021 that would require significant adjustments to the original budget. This led to the decision to defer contributions to the Capital Stabilization Fund and the Post Employment Insurance Liability (PEIL) Fund, which is dedicated to Other Post Employment Benefits (OPEB). As events have played out to date, this shortfall has not materialized in FY2021. Although revenue from local receipts, Recreation Enterprise Fund fees, hotel and motel excise taxes, etc., has declined, the increase in the property tax levy limit due to new growth in FY2020 was higher than expected, and this has roughly offset the decreases. State aid for FY2021 has dipped only slightly, and there is now less uncertainty regarding projected revenues and expenses for the current fiscal year.

In response to residents' concerns around the general issue of racial inequity in law enforcement (though not citing any specific events in Lexington), spending plans for the proposed new Police Station and for a new police firing range have been deferred.

The Town also received significant federal aid related to the pandemic.

The result is that the Town ended FY2020 with approximately \$16 million in available funds (Free Cash):

- \$1.5 million in FY2020 surplus revenues
- \$11.0 million in FY2020 expense turn-backs
- \$3.4 million in unappropriated Free Cash that was previously certified as of 6/30/2019

Approximately \$2.9 million of that cash was originally budgeted for transfers into the Capital Stabilization Fund and the PEIL (OPEB) Fund at the 2020 ATM.

Revenue from local receipts can be volatile as it directly reflects fluctuations in the local economy. A strong real estate development trend was good for FY2020, but recent declines in travel and restaurant business have lowered projections for FY2021.

In the Revenue Offsets category, the Town did not incur a deficit in the snow and ice budget for FY2020 due to a mild winter, so \$400,000 that is designated annually to handle a potential deficit was released and flowed to free cash.

Across the state, the economic situation is dire, and this may ultimately result in further reductions in state aid. A statewide revenue shortfall of \$2.4 to \$3.0 billion has been predicted for FY2020, representing a drop of roughly 8-10% from budget expectations. For FY2021, the state legislature has been filing temporary budgets while it grapples with this new reality. Nevertheless, the state plans to maintain Chapter 70 aid to cities and towns at the prior year's level, which represents a slight reduction in Lexington's budget projection which had anticipated a small increase.

The Town was also granted a total of \$4.5 million in state and federal (CARES Act) funds to assist in its Covid-19 response. It is worth noting that CARES Act funds are distributed as reimbursements for expenses directly related to Covid-19, and they cannot be used to replace lost revenue. However, these funds can offset many of the increased expenses the Town has experienced as a result of the pandemic, such as the cost of extra school buses, and police overtime for providing security at local hotels used by the state to quarantine some individuals and families. CARES Act grants are currently set to expire on December 31, 2020, so the Town is working to maximize their use in the available timeframe.

The Recreation Department budget, which is largely based on a self-funding model using the Recreation Enterprise Fund, is an area of immediate concern. The near total shutdown of public recreation facilities and programs led to a collapse in revenue for the enterprise fund. The Recreation Department has numerous fixed costs that could not be avoided in spite of the decline in usage, and the result is a deficit that we must now resolve. This has also triggered a reconsideration the self-funding model for Recreation in future budgets.

Development on the new Police Station has effectively been put on hold while the Select Board engages with residents on how best to advance racial equity in all aspects of local governance. There is the possibility

that changes to the design of the new Police Station will result from this process, and this has temporarily halted work on design and construction documents.

The most recent actuarial report on the Town's Pension Fund as of January 1, 2020, shows substantial increases in the unfunded pension liability. The growth in unfunded liability is largely attributable to changes to industry standard tables for mortality rates, but also the gradual growth in the number of Town and non-teaching school staff. This increase makes it unfeasible to maintain the current funding schedule for achieving full funding in FY2024. The Retirement Board recently adopted a new funding schedule to amortize the liability through FY2028, and this schedule results in an increase in the pension contribution of approximately \$750,000 per year through that date. This new funding schedule will put pressure on future operating budgets and the Retirement Board has agreed to review the funding schedule annually going forward.

Updates

This report presents the official positions of the Committee as of the date of publication. The Committee will continue to meet as necessary prior to and during Town Meeting and it may revise its official positions based on new or updated information. In a typical year, the Committee also reports orally to Town Meeting on each article. The oral report summarizes the Committee's current position, which may have been updated following publication of this report.

Warrant Article Analysis and Recommendations

Special Town Meeting 2020-2

Article 2020-2.2 Short Term Rental Impact Fee

Funds Requested	Funding Source	Committee Recommendation
<i>None</i>	<i>N/A</i>	Approve (7-0)

This article proposes that the Town accept Massachusetts General Laws (MGL) Chapter 64G, Section 3D¹ and thereby impose a 3% local option community impact fee on short-term rentals in Lexington. This article is closely related to Article 10 of STM 2020-3 which proposes to modify the zoning bylaw to clearly define “short-term rentals” and to regulate such rentals including the types of units that may be used for this purpose. Our report focuses on the financial implications of these proposals.

Background

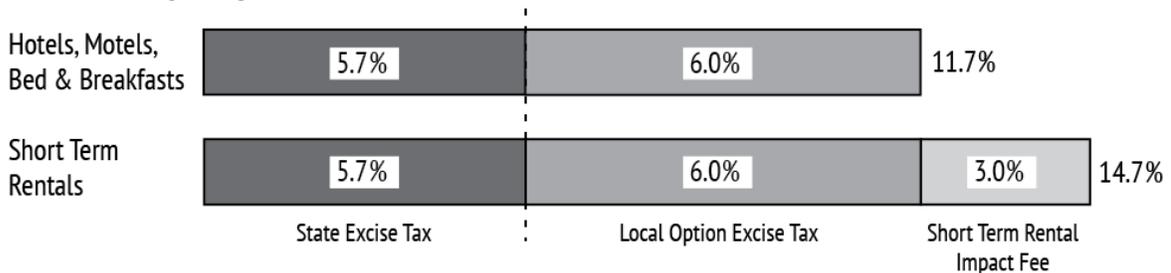
At a special town meeting in November 2009, Town Meeting voted to accept M.G.L. c. 64G, §3A. This imposed a 6% local option room occupancy excise tax that took effect on July 1, 2010.

If Town Meeting accepts both M.G.L. c. 64G, § 3D(a) and § 3D(b), then a new 3% community impact fee will be imposed on short term rentals of any unit in a two- or three-family dwelling in Lexington. The zoning bylaw change proposed under Article 10 of STM 2020-3 would further limit short term rentals to units in “operator-occupied” or “operator-adjacent” dwellings only.

The state-wide room occupancy excise tax rate is 5.7%. Combined with the Town’s 6% local option excise tax, the current room occupancy excise tax is 11.7%. This tax applies to room rentals of 90 days or less in hotels, motels, bed and breakfast establishments, and lodging houses. Beginning July 1, 2019, the room occupancy tax was also applied to short term rentals of property for 31 days or less.

The proposed community impact fee of 3% on short term rentals would result in a 14.7% tax on short term rental properties in Lexington. Hotels, motels, bed and breakfast establishments and lodging houses would not be subject to the community impact fee, leaving their excise tax unchanged at 11.7%.

Room Occupancy Excise Taxes



Excise taxes are collected by the State Department of Revenue and the portion attributable to local option taxes and community impact fees is distributed quarterly to municipalities.

¹ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter64G/Section3A>, <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIX/Chapter64G/Section3D>

At least 35% of the proposed community impact fees must be dedicated to affordable housing or local infrastructure projects. The Select Board can vote to have this 35% portion deposited directly into the Affordable Housing Stabilization Fund, bypassing appropriation by Town Meeting. The remaining 65% would flow to the General Fund.

The table below shows the history of the Town’s revenue from room occupancy excise tax since FY2015 along with recent 3- and 5-year averages, and a breakout of the excise tax revenue in FY2020 by quarters.

Fiscal Year	Room Occupancy Excise Tax
FY2015 Actual	\$880,026
FY2016 Actual	\$951,942
FY2017 Actual	\$1,056,493
FY2018 Actual	\$902,617
FY2019 Actual	\$947,681
FY2020 Actual	\$802,003
<i>Average 2018–2020</i>	<i>\$884,100</i>
<i>Average 2016–2020</i>	<i>\$932,147</i>
FY2021 Original Est.	\$970,000
FY2021 Revised Est.	\$242,500

⇒

FY2020 Quarter Ending	Room Occupancy Excise Tax
09/30/2019	\$284,719
12/31/2019	\$274,311
03/31/2020	\$169,398
06/30/2020	\$73,575

The pandemic had a notable impact on room occupancy excise tax revenue in the final quarter of FY2020. Due to the slowdown in travel related to the Covid-19 pandemic, the original FY2021 estimate of \$970,000 in room occupancy excise tax has been revised downward to \$242,500, one fourth of the original estimate. The use of short term rental properties is expected to follow the overall trend in room rentals, which will in turn lower the revenue from the community impact fee proposed by this article.

Revenue Impact

The Committee does not have enough information to accurately project the revenue that would result following approval of this article. Revenue from the community impact fee would be based on the number of short-term rental units, the number of stays, and the rates charged for such units. Currently, the Town has very limited information regarding these figures.

Short term rentals have been subject to the room occupancy excise tax for about a year, which could theoretically provide baseline revenue data, but the Massachusetts Department of Revenue does not provide a breakdown for room occupancy excise based on the type of room.

Operators of short term rentals are legally required to register their properties with the State Division of Local Services. As of February 2020, Lexington had about 95 properties designated for Short Term Rental use, but it is likely that a significant number of unregistered properties are also in use. Some additional information can be gathered from short term rental broker websites, but details such as the exact address and status of the “operator” of a rental property can be difficult to ascertain. Additionally, if Article 10 of STM 2020-3 is approved, some properties may no longer legally qualify for use as short term rentals in Lexington.

All these factors make it difficult to estimate the number of units and the revenue that would be subject to the community impact fee.

Based on regional estimates of short-term rental activity (*prior* to the Covid-19 pandemic), the Committee assumes that community impact fee revenue will be less than 5% of the current 5-year historical average for room occupancy excise tax (which is primarily derived from large commercial hotels). If that

assumption is correct, the excise tax revenue would be under \$50,000 per year, and possibly less than \$10,000 while travel remains limited due to Covid-19. New regulations on short term rentals may also generate expenses related to enforcement, which would offset new revenue.

If this article and Article 10 of STM 2020-3 are approved by Town Meeting, we expect that experience in the coming years will allow for good projections of revenue for future fiscal years. Our assumption is that the revenue would, at a minimum, offset any new expenses related to enforcement of the fee.

The Committee recommends approval of this request (7-0).

Article 2020-2.6
Authorize Special Legislation-Development Surcharge For
Community Housing

Funds Requested	Funding Source	Committee Recommendation
<i>None</i>	<i>N/A</i>	Approve (7-0)

This article requests authorization for the Select Board to petition the Massachusetts General Court to enact special legislation that would allow a targeted and measured surcharge on specific residential development. The revenue from the surcharge is intended to be used to mitigate the loss of moderate-income housing in Lexington by funding the creation of community housing to address identified housing gaps, such as the need for housing affordable to Lexington municipal and school employees.

The residential housing market in Lexington has been strong for the past ten years due to the abundance of high-paying jobs in greater Boston area, proximity to cultural and historical attractions, high-performing Lexington public schools, and a high level of municipal services. With a declining number of buildable lots and an increasing rate of teardowns for existing old homes, residential houses for sale have tended to become bigger and more expensive, putting them out of reach for most low- and moderate-income buyers in the area.

To mitigate the loss of moderate-incoming housing resulting from the high demand for buildable parcels of land, this article would request legislation to establish a residential linkage fee, “the community housing surcharge,” to be added to building permit fees for all new single- and two-family residential construction where an existing single- or two-family dwelling had been demolished.

The Select Board would determine the rate of the community housing surcharge. That rate would apply on a per-square-foot basis depending on the certified total gross floor area of the structure or structures permitted by a building permit. The Select Board would evaluate and adjust the rate of the community housing surcharge for inflation annually. A revision to the surcharge policy and rates would be made, if necessary, every five years by the Select Board pursuant to a report from the Town Manager. The Select Board would be authorized to adopt additional requirements, exemptions, and regulations to implement or enforce the community housing surcharge.

The Committee notes that the article does not specify a limit on the magnitude of the surcharge, but this could be amended by the Select Board.

The building commissioner of the Town of Lexington would not issue a certificate of occupancy for a building until the applicable community housing surcharge required was paid in full. Alternatively, an applicant intending to reside in the new home may opt to add the surcharge to the real estate taxes on the property with 0% interest. In this case, payment of the surcharge would not be required until the sale of the home to a third party. In addition, starting from the date of the certificate of occupancy and as long as the home is not sold, 20% of the original surcharge will be abated each year until the amount due on the

surcharge is zero. Thus, property owners that redeveloped parcels for their own occupancy would owe no surcharge after five years.

This article is designed to impose the full surcharge for speculative real estate development where newly built houses are immediately put up for sale, while limiting the impact on applicants who intend to build and reside in a new dwelling.

The article contemplates that all received surcharges would be deposited directly (without appropriation) into the existing Affordable Housing Capital Stabilization (AHCS) Fund for future use. A one-time approval by a two-thirds vote of Town Meeting would be required to dedicate such a revenue stream to the AHCS Fund on an ongoing basis; and a two-thirds vote would be required for any and all appropriations out of the AHCS Fund, or for any other changes to the administration of the fund.

The Select Board would be authorized to approve minor amendments to the requested legislation, before its enactment by the General Court, as long as such amendments were within the scope of the general objectives of the motion.

The Committee considers this article to be a reasonable policy that complements the related zoning regulation.

The Committee recommends approval of this request (7-0).

Special Town Meeting 2020-3

Article 2020-3.2 Appropriate for Prior Years' Unpaid Bills

Funds Requested	Funding Source	Committee Recommendation
<i>None</i>	<i>N/A</i>	IP

As of publication, no action is anticipated under this article.

The Committee supports indefinite postponement for this article.

Article 2020-3.3 Establish, Dissolve and Appropriate To and From Specified Stabilization Funds

Funds Requested	Funding Source	Committee Recommendation
<i>See below</i>	<i>See below</i>	Approve (7-0)

Specified Stabilization Funds

The State statute authorizing towns to create and maintain a stabilization fund (G.L. c. 40, § 5B) was amended in 2003 to permit the creation of stabilization funds for specified purposes. Multiple funds may be created for different purposes. Each fund is maintained in a separate and independent account, and interest earned remains with the fund. The monies in a specified stabilization fund may be appropriated for the stated purposes but not for other purposes. Lexington’s first specified stabilization funds were established at the 2007 Annual Town Meeting.

Town Meeting may create a specified stabilization fund, alter a fund’s specified purpose, or make an appropriation from a fund by a two-thirds majority vote. Appropriations into specified stabilization funds are approved by a simple majority. Appropriations into a fund do not authorize expenditures but restrict future uses of the funds to purposes defined by the fund.

The following transfers are requested under this article.

Source	(Withdrawal) Deposit	Destination	Committee Recommendation
Capital SF	(\$1,100,000)	Exempt Debt Service	Approve (7-0)
Mitigation Payments	\$47,352	Transportation Demand Management/Public Transportation SF	Approve (7-0)

Capital Stabilization Fund

This article requests an appropriation of \$1,100,000 from the Capital Stabilization Fund. Withdrawals from this fund are used to pay portions of the debt service for the Town’s capital projects. This includes some within-levy debt service, and also debt service for projects that are exempt from the limits of Proposition 2½. In the latter case, this lowers the tax revenue that must be raised in excess of the levy limit. This helps to smooth out short term spikes in the tax rate that result from debt issued for exempt projects.

The Town’s estimated exempt debt service for the current fiscal year (FY2021) is \$17,300,000. This request would cover a portion of the debt service triggered by new long-term debt issued at the end of FY2020 for exempt capital projects including Hastings Elementary School, Fire Headquarter Building and Lexington Children’s Place. The Town had previously planned to issue this debt in February 2021, but a highly favorable municipal bond market during the latter half of FY2020 motivated the Town to accelerate its schedule for issuing bonds. This decision increased the annual debt service in FY2021, but the Committee agrees that it was a prudent decision. Securing the lower interest rates will decrease the total cost of the debt to the Town, and over the long term this will reduce the need to use the Capital Stabilization Fund.

The balance of the Capital Stabilization Fund as of the end of FY2020, including interest earnings was \$25,229,254.

Transportation Demand Management/Public Transportation (TDM/PT) Stabilization Fund

This article requests an appropriation of \$47,352 into the TDM/PT Stabilization Fund. These funds were collected from developers under Memoranda of Agreement (MOAs) as part of their commitment to mitigate the impacts of zoning changes granted for their developments. The fund is used to support the Lexpress bus service, Rev Shuttle, and could support future transportation related initiatives. Since the 2020 Annual Town Meeting, the Town has received mitigation payments of \$45,737 from Avalon and \$1,615.34 from Brookhaven.

This motion also requests Town Meeting’s permission, under M.G.L. Ch. 40, § 5B, to deposit all future MOA payments for the TDM/PT Stabilization Fund from five entities without requiring appropriation by Town Meeting. Those entities are Avalon at Lexington Hills, Takeda Pharmaceuticals, Watertown Savings Bank, Brookhaven, and Lexington Place Condominium.

The balance of the TDM/PT Stabilization Fund as of the end of FY2020 was \$377,177.

The Committee recommends approval of this request (7-0).

<p>Article 2020-3.4 Rescind Prior Borrowing Authorizations</p>

Funds Requested	Funding Source	Committee Recommendation
<i>None</i>	<i>N/A</i>	Approve (7-0)

State law requires that Town Meeting vote to rescind the unissued portions of borrowing authorizations (appropriations funded by debt) that are no longer required for the purpose stated in the authorization. Rescinding these authorizations is the final bookkeeping task for all debt-based appropriations.

Town staff have recommended the following rescissions for projects that require no further access to the appropriated debt funding.

Town Meeting	Article	Project Description	Amount to be Rescinded
2016 STM 5	4	Supplemental Appropriation for School Facilities - Modular Classrooms	\$14,374
2013 ATM	10(s)	Concord Ave Sidewalk	\$59,073
2011 STM	2	Bridge/Bowman Construction	\$5,887

The Committee recommends approval of this request (7-0).

<p>Article 2020-3.5 Amend FY2021 Operating, Enterprise and CPA Budgets</p>

Funds Requested	Funding Source	Committee Recommendation
<i>See below</i>	<i>See below</i>	Approve (7-0)

At the Annual Town Meeting held using remote participation last June, operating, enterprise fund and Community Preservation Act (CPA) budgets were presented and approved based on the *FY2021 Recommended Budget and Financing Plan* published on February 24, 2020². It was understood that adjustments to these budgets would likely be required at a fall special town meeting after assessing the initial impact of the Covid-19 pandemic on the Town’s revenues and operations.

As it turns out, the Town’s original FY2021 revenue estimate has not been materially affected in total. Although some components (such as hotel and motel taxes) are down significantly, other components (primarily the new growth from FY2020) are significantly higher than originally projected, resulting in a modest net increase in FY2021 revenue available for appropriation. As a result, only a few adjustments to the original FY2021 appropriations are proposed. These adjustments, which are described below, essentially offset each other for no net change in total FY2021 appropriations.

Approximately \$3 million in unappropriated funds from the FY2020 Annual Town Meeting were added to Free Cash at the end of FY2020 and remain available for appropriation (see the footnote below). Continuing

² The major exception to the original financial plan – which did not involve the operational budgets – was holding in abeyance planned contributions from available funds (Free Cash) to the Capital Stabilization Fund of \$1,773,062 and to the PEIL (OPEB) Fund of \$1,179,721, for a total of \$2,952,783.

a cautious approach to ensure financial flexibility, it is recommended that these funds remain unallocated during FY2021 and thus available to cover potential shortfalls in the FY2022 budget.

Guidance from the Department of Revenue regarding the size of this year’s state CPA match indicates that we should expect a matching percentage only slightly below the Town’s initial budget projection. No changes in appropriations to or from the Community Preservation Fund are proposed under this article at this time. It should be noted, however, that Article 2020-3.7 involves a proposed land acquisition using this fund and could involve a CPA contribution if it goes forward.

Town staff have proposed the following adjustments to the previously approved FY2021 Operating and Enterprise Fund budgets. Line numbers in the tables for this section refer to budget categories in the *FY2021 Recommended Budget and Financing Plan*.

Operating Budget

Line		From	To	Change
2410	Payment on Funded Debt	\$6,147,000	\$6,292,000	\$145,000
2420	Interest on Funded Debt	\$1,030,508	\$1,101,674	\$71,166
2430	Temporary Borrowing	\$3,339,936	\$2,977,909	(\$362,027)
	<i>Net Change</i>			(\$145,861)

Immediate cash flow needs for large capital projects are ordinarily financed using temporary borrowing (*i.e.*, bond anticipation notes, or BANs). These short-term, interest-only loans are typically held by the Town for up to a year, and then converted into long-term bonds during the next scheduled bond issuance early the following year. This allows the Town to efficiently bundle a collection of debts into a smaller number of larger (and more financially attractive) bonds. The result is that the first major debt service payment for most capital projects is usually delayed until the fiscal year following the start of the project.

Following the June 2020 ATM, Town staff elected to accelerate the bond financing for several previously authorized capital projects, including the Hastings School reconstruction. This allowed the Town to take advantage of historically low bond interest rates, but it now requires the Town to pay debt service for these newly issued bonds during the current fiscal year rather deferring them to FY2022 as originally planned.

The additional bond payments required in FY2021 include \$145,000 in principal plus \$71,166 in interest. However, the early bond issuance, the low interest rates, and the delay of certain projects in the spring of this year due to the pandemic, will lower the FY2021 interest costs for temporary borrowing by \$362,000, resulting in a net reduction to within-levy debt service costs of \$145,861. The funds thereby freed up are available to fund budget deficits in other line items.

Line		From	To	Change
7100-7400	Land Use Expenses	\$ 510,687	\$ 526,987	\$ 16,300

In order to continue with planning for zoning changes and infrastructure improvements at Hartwell Avenue, the Planning Board requested, and the Select Board agreed, to an appropriation of \$16,300 to fund a community outreach effort. This is the only new spending project proposed for the FY2021 operating budget.

Line		From	To	Change
5200	General Fund Support for Community Center/Recreation	\$ 218,916	\$ 616,916	\$ 400,000

The Town programs most affected by the Covid-19 pandemic have been those managed by the Recreation and Community Programs Department (the “Recreation Department”), including the Community Center. Traditionally, the operating costs of these programs have been funded almost entirely within the Recreation Enterprise Fund by fees received for Town recreational activities, the use of playing fields, and the Pine

Meadows golf course.³ The sole exception has been a small annual contribution from the General Fund of approximately \$200,000 for staffing and certain programs at the Community Center for which fees are not charged.

The pandemic necessitated the shutdown of many of the Recreation Department’s fee-generating programs, which resulted in a significant revenue shortfall. Although certain expenses, including those for the employment of temporary staff to run summer programs, were also reduced, the department continued to incur substantial costs, including those for permanent staff, indirect costs owed to the General Fund for DPW and other support services, and fixed costs incurred for the maintenance of playing fields, etc.

The deficit incurred by the Recreation Enterprise Fund in the latter part of FY2020 will substantially deplete that fund’s retained earnings. Because the effects of the pandemic are continuing, estimates of anticipated fee income in FY2021 (other than the Pine Meadows Golf Course) have also been drastically reduced. To meet this shortfall, it is proposed to increase this year’s support from the General Fund by \$400,000.

Concern about the long-term viability of the Recreation Department’s self-funding model motivated a survey of financing models for recreation and community programs in comparable towns. This revealed that Lexington is unusual in its strong reliance on self-funding for the Recreation Department. Further discussions are contemplated on a possible restructuring of this funding model.

Water/Wastewater Enterprise Funds

Line		From	To	Change
3620	MWRA Water Assessment	\$ 8,030,101	\$ 8,006,399	\$ (23,702)
3720	MWRA Wastewater Assessment	\$ 8,248,093	\$ 7,922,359	\$ (325,734)

The amounts appropriated under Article 5 of the 2020 Annual Town Meeting for Water and Wastewater Enterprise Fund expenses were based on preliminary FY2021 assessments issued by the MWRA in February. The revisions here reflect the final assessments approved by the MWRA board this past June. These revised assessments, which slightly lower the costs of each fund, will be used in the calculation of the water and wastewater rates approved by the Select Board this fall. Amending the original appropriations is a simple housekeeping task.

The Committee recommends approval of this request (7-0).

Article 2020-3.6

Amend Post Employment Insurance Liability Fund

Funds Requested	Funding Source	Committee Recommendation
<i>None</i>	<i>N/A</i>	IP

This article was inserted into the warrant to reserve an opportunity to appropriate funds into the Post Employment Insurance Liability (PEIL) Fund.

The PEIL Fund holds funds that will be used in the future to pay for health care benefits for retirees. These benefits make up most of the “other post-employment benefits” (OPEB) that the Town provides as part of the total compensation for its employees. For a detailed discussion of OPEB, the present status of the PEIL

³ Capital expenditures for recreation facilities involving fee-generating activities have been primarily funded using the Recreation Enterprise Fund, while facilities and activities that do not generate revenue directly were funded by the General Fund. Since the adoption of the Community Preservation Act (CPA), many recreation capital projects have been funded through the Community Preservation Fund if they are qualified under CPA guidelines.

Fund, and related issues, please see Appendix F in this Committee’s report to the 2020 Annual Town Meeting.

The Town of Lexington’s future OPEB liabilities are not fully funded. The unfunded liability is the sum of the actuarially determined obligations incurred during current and prior fiscal years that have not been funded (via contributions to the PEIL Fund). Every year, the unfunded liability grows by the present value of future benefits earned during the current year⁴, less the value of benefits provided to retirees during the current year through the operating budget, and less any contribution to the PEIL Fund for future liabilities.

At the Annual Town Meeting held in June 2020, Town Meeting appropriated \$750,000 from the remaining balance of the Health Insurance Claims Trust Fund⁵ to help cover the Town’s annual health insurance costs⁶ as part of the operating budget. Since that portion of the health insurance costs would have otherwise come from the General Fund, the Town’s practice has been to appropriate a matching amount from the General Fund into the PEIL Fund, which Town Meeting also approved.

Prior to the Covid-19 pandemic the FY2021 budget included an additional appropriation of \$1,129,721 from Free Cash into the PEIL Fund. This appropriation was deferred to preserve financial flexibility while the Town adapted to the pandemic.

Given the continuing fiscal uncertainty regarding the pandemic, there is no request to appropriate any further funds into the PEIL Fund during FY2021. Therefore, it is expected that this article will be indefinitely postponed.

The Committee supports indefinite postponement of the article.

**Article 2020-3.7
Land Acquisition**

Funds Requested	Funding Source	Committee Recommendation
Unknown	CPA Cash CPA Debt	Pending

The Committee was notified that this proposed land acquisition would require a combination of cash and debt financing using the CPA Fund. No other details were publicly available prior to publication of this report.

If the Town moves forward with this request, the Committee will announce its position when the article is taken up by Town Meeting.

The Committee has not taken a position on this article as of publication.

⁴ The present value of the expected post-retirement benefit obligations attributable to employee service during the fiscal year is referred to as the “normal cost” or “service cost”.

⁵ The Health Insurance Claims Trust Fund is a reserve fund the Town was required to maintain when it self-insured for health benefits. When the Town joined the state’s Group Insurance Commission (GIC), it was agreed that the fund would gradually be spent down for employee health benefit costs.

⁶ The Health Insurance Claims Trust Fund had a remaining balance of \$2,474,691 on June 30, 2020.

<p>Article 2020-3.8 Reduce Legal Expenses</p>
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Funds Requested	Funding Source	Committee Recommendation
<i>None</i>	<i>N/A</i>	Disapprove (1-6)

This citizen’s petition is premised on the proposition that the Town could achieve cost savings by hiring in-house counsel to perform much of the Town’s legal work in lieu of relying exclusively on outside counsel. It seeks to achieve this result by making certain adjustments to the operating budget that is the subject of Article 2020-3.5 (Amend FY2021 Budgets).

Specifically, the article asks Town Meeting to reduce the expense line item in the municipal budget for legal services (which funds outside counsel) by \$300,000, and to increase the line item which supports the Town Manager’s staff (which could be used to hire in-house counsel) by \$100,000, for a net budget reduction of \$200,000. The underlying assumptions are that \$100,000 would be sufficient to hire an in-house lawyer and that outside legal costs would thereby be reduced by 73%, from the budgeted \$410,000 to \$110,000. The article does not specify what should be done with the resulting surplus from these proposed budget adjustments.⁷ It also does not seek any adjustments to the budget of the school department.

Some other municipalities, primarily larger cities and towns such as Boston, Cambridge, Brookline and Newton, employ one or more in-house counsel, and there are some advantages to this arrangement. Given the current economics of the legal profession, in particular the large number of unemployed or under-employed lawyers, it is fair to say that the hourly cost of an in-house lawyer, after accounting for wages and benefits, is substantially less than the hourly cost of outside counsel.⁸ It is also likely that a dedicated in-house lawyer would have greater familiarity with Town personnel and practices and be more accessible to Town staff on a day-to-day basis.

There are also some disadvantages. Because in-house counsel deal with the affairs of only a single municipality, rather than a variety of municipalities, they are not likely to have the same breadth of experience as outside counsel. Law firms concentrating in municipal law, having specialists with particular skills and experience in certain areas such as real estate transactions, environmental concerns, or courtroom litigation, can add substantial value to the services provided. It is not clear whether a community the size of Lexington would have enough “routine” legal work to occupy an in-house lawyer full-time. And if the work of a particular outside law firm, or a lawyer within a firm, should be found wanting, it would be far easier and less disruptive to replace that firm or lawyer than it would be to discharge a Town employee and find a suitable replacement. The choice between the two approaches is, at best, a judgment call.

The Town’s governing statute, the Selectmen-Town Manager Act, confers the responsibility for engaging counsel not on Town Meeting but on the Select Board and the Town Manager. Section 2(b) of that Act provides that “[the Select Board] shall appoint... a town counsel.” Section 9(h) provides that “[t]he town manager shall... have the authority... to employ special counsel with the approval of the [Select Board] to assist the town counsel whenever in his judgment it may be necessary.”

Given this statutory mandate, a majority of this Committee believes it is the prerogative of the Select Board and the Town Manager, acting as the “executive branch” responsible for managing the day-to-day affairs

⁷ Among other things, the net \$200,000 reduction in the “legal” budget could be used: to increase other line items in the operating budget or to lower the tax rate. Alternatively, it could simply remain unallocated and flow to Free Cash at the end of the fiscal year.

⁸ The proponent has brought to this Committee’s attention on numerous occasions classified advertisements placed in the *Massachusetts Lawyers Weekly* by municipalities seeking to hire in-house counsel at a very modest salary level, and these positions presumably do not go unfilled.

of the Town, to determine how best to meet the Town's needs for legal representation.⁹ While it might be reasonable for Town Meeting to adopt a non-binding a resolution urging a different approach, the majority believes it is neither appropriate, nor in the best interests of the Town, as long as the Select Board's judgment is reasonable, for Town Meeting to try to force a change in this hiring policy through changes in the budget.

A minority supports this request on the grounds that (1) a substantial portion of the town's legal services are of a routine nature (i.e. not specialized as in bond or labor counsel), (2) the amount spent on routine legal services is substantial enough that use of in-house counsel would yield a savings, (3) a significant pool of qualified candidates exists from which to hire in-house counsel, (4) free external resources exist to support in-house counsel in their dealings with routine legal services, and (5) outside counsel could still be maintained for litigation or complex legal problems.

The Committee recommends disapproval of this request (1-6).

⁹ In fulfillment of that responsibility, the Select Board has periodically reexamined the issue of what legal counsel arrangements best serve the Town, including the convening of special committees to examine the issue and make recommendations. Those committees, while recognizing that there may be reasonable alternatives, have consistently recommended continuation of the current arrangements. Most recently, in the spring and summer of 2020, the Select Board re-examined the issue of town counsel arrangements and, after receiving responses to a Request for Proposals, voted unanimously to continue the current arrangements.